MENTAL HEALTH

REVIEW BOARD

April 1, 1989 - December 31, 1990

Manitoba
Health

91-06955/

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INTRODUCTION

The Mental Health Review Board was established by legislative proclamation on March 1, 1988. The Board was formed by an amendment to The Mental Health Act to hear appeals regarding any aspect of the admission or treatment of a patient in a psychiatric facility.

This is the second annual review of the Mental Health Review Board of Manitoba. This report covers a period of twenty-one months, April 1, 1989 to December 31, 1990. Thereafter, the Board will operate and report on a calendar year basis.

During this period, the Board continued to hear appeals from patients in psychiatric facilities pursuant to Section 26.5(l) of The Mental Health Act and automatic reviews of involuntary patients pursuant to Section 26.3(l) of the Act. An automatic review of the status of an involuntary patient is required after the filing of the third certificate of renewal and annually, thereafter.

At present, there are eighteen Review Board members who were appointed by the Lieutenant Governor in Council June 15, 1989. Each panel consists of three members; by statute, one must be a lawyer who presides at the hearing, one a psychiatrist and one a person who is neither a lawyer nor a psychiatrist.

Five panels have been appointed for the Brandon Mental Health Centre and ten panels have been appointed to hear appeals at the Selkirk Mental Health Centre, the Eden Mental Health Centre, and psychiatric units in City of Winnipeg health care facilities.

The Review Board is an independent quasi judicial body with reporting responsibility to the Chief Provincial Psychiatrist. Private legal counsel is provided for the Board to consult on interpretation of the Act and other related issues. The Board maintains an ongoing liaison with the Mental Health Division.

FUNCTION OF THE BOARD

The Mental Health Review Board is concerned with the rights of all individuals in Manitoba psychiatric units or facilities. However, most appeals involve individuals who are committed involuntarily to a mental health facility and, therefore, deprived of their personal liberty. Legislation has been instituted to ensure their rights. Upon application, the Board has the authority to:

a) review the status of a patient;

b) review the revocation of a certificate of leave;

c) review an opinion that a person is or is not mentally competent to consent or refuse consent to treatment;

d) review an opinion that a person is or is not capable of managing his or her affairs;

e) authorize specified psychiatric treatment and other related medical treatment without consent;
(**NOTE:** This request is only applicable if a psychiatrist is treating a competent patient and the patient refuses treatment; the psychiatrist makes application to the Board.)

f) authorize the medical officer in charge to withhold access to all or part of the clinical record;
(**NOTE:** This request is only applicable when an individual requests access to their clinical file in writing to the Medical Officer in Charge and it is refused; the physician makes application to the Board.)

BOARD PROCEDURES

The Order of Evidence Proceedings follow the procedures common to all courts and, though less formal, are conducted with dignity and solemnity. The Board has the power to subpoena witnesses to give evidence under oath.

Proceedings before the Review Board are designed not to be adversarial in nature. Generally the participants in the hearing have understood the purpose, order of procedure and their own role. Every effort has been made to assist patients as much as possible in comprehending the process in which they are involved. Patients are not precluded from testifying on the basis of their competency to swear an oath and are permitted to give unsworn evidence. The decision of the Board (and reasons for decision, if requested) are sent by Registered Mail or by courier to all parties or their counsel.

Since the inception of the Board, there has been some difficulty in scheduling hearings due to the rigidity of constituted panels and some conflicts of interest in scheduling professionals. Under the present Act, the eighteen Board members are appointed to fifteen constituted panels and cannot be interchanged. Psychiatrists or lawyers directly involved with a hearing are choosing to remove themselves to avoid conflict of interest. The Review Board is considering the proposal of an amendment to allow for more flexibility on the panel composition.

ACTIVITIES

a) Applications

During April 1, 1989 - December 31, 1990, the Board received 177 applications requesting hearings. Of those:

1) Twenty-one applicants had a Review Board hearing.

2) Eighty-two applicants were discharged or had their status changed.

3) Sixty-five applicants withdrew their requests.

4) Nine applicants have their hearings pending.

b) Hearings

Decisions from the 21 hearings resulted in:

1) Eleven patients having their involuntary status confirmed.

2) Two patients having their status changed from involuntary to voluntary.

3) Four patients confirmed not to be mentally competent to consent or refuse consent.

4) One patient declared mentally competent to consent or refuse consent.

5) One patient confirmed not capable of managing his/her affairs.

6) One patient authorized access to part of his/her clinical record.

7) One patient denied access to any of his/her clinical record.

8) One patient having his/her review of treatment plan and general treatment on the ward dismissed.

The above-mentioned hearings have lasted anywhere from one hour to ten hours with the average hearing being approximately three and a half hours.

c) **Automatic Reviews**

During April 1, 1989 - December 31, 1990, 33 hearings for automatic reviews were completed and resulted in the following decisions:

1) Twenty-five patients had their involuntary status confirmed.

2) Six patients had their status changed from involuntary to voluntary.

3) Two hearings were adjourned to allow the patient to retain counsel. (**NOTE:** Both patients have now had their hearings completed; one patient has been made voluntary and the other remains involuntary.)

d) **Other Activities**

An orientation program was held for all newly appointed Review Board members in July, 1989. The program was designed to educate the new members to the gravity of their task and the importance of performing it judiciously.

The Review Board's annual conference was held in May, 1990. Guest speaker was Ellen Kruger, the Advocate for the Canadian Mental Health Association. In her presentation she stressed that:

* Review Board hearings should be scheduled promptly.

* There should be consistency and uniformity on the Board panels.

* The protocol and procedure of the Board should be explained to patients.

* Patients should be aware that they have every right to request reasons for the Board's decision or appeal any decision by making application to the Court of Queen's Bench.

A one day conference for the chairpersons of each Review Board panel was held. A number of areas were canvassed including Board procedures, evidence, tendering of documents, subpoenas and rulings.

The Review Board has published a brochure and poster entitled "**Know Your Rights**", informing the public of patients' rights and of the Review Board's function. This brochure is available in French and English and has received wide distribution throughout Manitoba.

The Board has also prepared an information package on protocol and procedure of a hearing which is distributed to anyone attending a Review Board hearing for the first time.

FUNCTIONS OF THE COORDINATOR

A Review Board Coordinator constitutes the panels and provides administrative control and direction. The Coordinator is required to:

- receive and acknowledge applications for review;
- schedule hearings;
- notify all parties and the facility of the date, time and location of the hearing;
- arrange for court reporter services;
- prepare subpoenas for witnesses signed by the chairperson;
- act as respondent for the Board when representation is requested in court;
- provide secure storage for documentation (court reporter's notes, exhibits, etc.);
- issue the final order or decision to all parties;
- maintain statistics, prepare all reports and updates on Review Board activities, and be responsible for compiling the annual report;
- provide an orientation program for newly appointed Review Board members;
- attend hearings and chair semi-annual conferences of Review Board members;
- prepare documentation for Orders-in-Council for appointment of members and contracts for court reporters, interpreters, etc.;
- handle all administrative correspondence, respond to public requests and liaise where appropriate with federal/provincial representatives, departments, committees;
- develop and prepare information materials such as brochures, posters and displays on patients' rights and the function of the Review Board.

SUMMARY

Since our last annual review, the Board has expericnced an increase in applications requesting Review Board hearings. Currently, we average 8.42 applications per month as compared to seven applications per month during our first year of operation.

As mentioned earlier, the Board has experienced difficulty with the selection of panels to sit for hearings. The Review Board has prepared and presented to the Minister of Health a proposed amendment to The Mental Health Act that would establish a roster of panelists to each category of membership on a panel. If passed, the amendment will allow for an enlarged roster of panelists and should result in a more rapid appeal process.

This is a time of changing social values that have an emphasis on personal rights and freedoms. It is the Board's hope that the review process has reflected the spirit of the Act and has guaranteed the human rights and safeguards accorded by the principles of natural justice.